

59-7-110. Utah net losses -- Carryforwards and carrybacks -- Deduction.

(1) The amount of Utah net loss that shall be carried back or forward to offset income of another taxable year is determined as provided in this section.

(2) (a) Subject to the other provisions of this section, a Utah net loss from a taxable year beginning before January 1, 1994, shall be carried back three taxable years preceding the taxable year of the loss and any remaining loss shall be carried forward five taxable years following the taxable year of the loss.

(b) (i) Subject to the other provisions of this section, a Utah net loss from a taxable year beginning on or after January 1, 1994, may be carried back three taxable years preceding the taxable year of the loss and carried forward 15 taxable years following the taxable year of the loss.

(ii) If an election is made to forego the federal net operating loss carryback, a Utah net loss is not eligible to be carried back unless an election is made for state purposes.

(3) A Utah net loss shall be carried to the earliest eligible year for which the Utah taxable income before net loss deduction, minus Utah net losses from previous years that were applied or required to be applied to offset income, is not less than zero.

(4) (a) Except as provided in Subsection (4)(b), the amount of Utah net loss that shall be carried to the year identified in Subsection (3) is the lesser of:

(i) the remaining Utah net loss after deduction of any amounts of the Utah net loss that were carried to previous years; or

(ii) the remaining Utah taxable income before net loss deduction of the year identified in Subsection (3) after deduction of Utah net losses from previous years that were carried or required to be carried to the year identified in Subsection (3).

(b) (i) The amount of Utah net loss carried back from a taxable year may not exceed \$1,000,000 in Utah taxable income for each return filed under this chapter in a taxable year.

(ii) A Utah net loss in excess of \$1,000,000 may be carried forward.

(iii) A remaining Utah net loss shall be available to be carried to one or more taxable years in accordance with this section.

(5) (a) (i) Subject to Subsection (5)(a)(ii), a corporation acquiring the assets or stock of another corporation may not deduct any net loss incurred by the acquired corporation prior to the date of acquisition.

(ii) Subsection (5)(a)(i) does not apply if the only change in the corporation is that of the state of incorporation.

(b) An acquired corporation may deduct the acquired corporation's net losses incurred before the date of acquisition against the acquired corporation's separate income as calculated under Subsections (6) and (7) if the acquired corporation has continued to carry on a trade or business substantially the same as that conducted before the acquisition.

(6) For purposes of Subsection (5)(b), the amount of net loss an acquired corporation that is acquired by a unitary group may deduct is calculated by:

(a) subject to Subsection (7):

(i) except as provided in Subsection (6)(a)(ii), calculating the sum of:

(A) an amount determined by dividing the average value of the acquired corporation's real and tangible personal property owned or rented and used in this state

during the taxable year by the average value of all of the unitary group's real and tangible personal property owned or rented and used during the taxable year;

(B) an amount determined by dividing the total amount paid in this state during the taxable year by the acquired corporation for compensation by the total compensation paid everywhere by the unitary group during the taxable year; and

(C) an amount determined by:

(I) dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year; and

(II) (Aa) if the unitary group elects to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(2)(d), multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by two;

(Bb) if the unitary group is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(3)(a), multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by four; or

(Cc) if the unitary group is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(3)(b), multiplying the amount calculated under Subsection (6)(a)(i)(C)(I) by 10; or

(ii) if the unitary group is required to calculate the fraction for apportioning business income to this state using the method described in Subsection 59-7-311(3)(c), calculating an amount determined by dividing the total sales of the acquired corporation in this state during the taxable year by the total sales of the unitary group everywhere during the taxable year;

(b) dividing the amount calculated under Subsection (6)(a) by the same denominator of the fraction the unitary group uses to apportion business income to this state:

(i) for that taxable year; and

(ii) in accordance with Section 59-7-311;

(c) multiplying the amount calculated under Subsection (6)(b) by the business income of the unitary group for the taxable year that is subject to apportionment under Section 59-7-311; and

(d) calculating the sum of:

(i) the amount calculated under Subsection (6)(c); and

(ii) the following amounts allocable to the acquired corporation for the taxable year:

(A) nonbusiness income allocable to this state; or

(B) nonbusiness loss allocable to this state.

(7) The amounts calculated under Subsection (6)(a) shall be derived in the same manner as those amounts are derived for purposes of apportioning the unitary group's business income before deducting the net loss, including a modification made in accordance with Section 59-7-320.

Amended by Chapter 155, 2010 General Session